

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1118 of 1996

in

SPECIAL CIVIL APPLICATION No 4226 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT and  
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BALWANTRAI T PASTAGIA

Versus

SURAT PEOPLE'S CO-OPERATIVE BANK LTD

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Appearance:

MR HARIT N SOMPURA for Petitioner

MR V B PATEL FOR MR. DEEPAK V PATEL FOR RESPONDENT

NO.1.

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CORAM : THE CHIEF JUSTICE G.D.KAMAT and  
MR.JUSTICE C.K.THAKKER

Date of decision: 27/12/96

ORAL ORDER (PER C.K.THAKKER J)

1. This appeal is filed against the order passed by

the learned Single Judge on June 24, 1996 in Special Civil Application No.4226 of 1996. By the said order the learned Single Judge held that application preferred by the appellant-workman under the Bombay Industrial Relations Act, 1946 before the Labour Court challenging his termination was beyond the prescribed period of limitation.

2. Short facts of the case are that the appellant was appointed as a Clerk in Surat Peoples Cooperative Bank Ltd. Surat on May 1, 1966. He was made permanent with effect from July 1, 1967. It appears that on various occasions, warning notices for so called misconduct were issued to him by the Bank. Finally, services of the appellant came to be terminated vide resolution dt. December 30, 1981, passed by the Bank and the appellant was informed about the said resolution and termination of his services vide a communication dt. January 1, 1982. The appellant appears to have written a letter to the Bank on January 28, 1982 requesting the Bank to continue him in service. Similar letters were written by the appellant on April 24, 1982, April 28, 1983, May 12, 1984 and July 26, 1985. The Board of Directors, however, never acceded to the request made by the appellant and the appellant was informed vide communication dt. January 6, 1986 that his request could not be accepted and nothing further could be done in the matter. On 12th March 1986, the appellant submitted approach letter which was received by the respondent Bank on March 13, 1986. It is the case of the appellant that since there was no response to the said approach letter, he was constrained to initiate proceedings under the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the Act") by filing T Application before the Labour Court on April 16, 1986.

3. The Labour Court, Surat vide its judgment and award dt. July 26, 1995 granted the application of the appellant-workman and directed the Bank to reinstate him in service with continuity and full back wages.

4. Being aggrieved by the said order, the respondent Bank preferred an appeal before the Industrial Court, Surat and the Industrial Court, vide its judgment and order dt. May 15, 1996 quashed and set aside the judgment and award passed by the Labour Court, Surat mainly on the ground that application filed by workman was beyond the prescribed period of limitation.

5. Since the appellant was of the opinion that the order passed by the Labour Court was in consonance with the law

and setting aside the said order by Industrial Court was not in consonance with law, he preferred the above Special Civil Application. The learned Single Judge, however, was of the view that the order passed by the Industrial Court was lawful, legal and in consonance with law, dismissed the petition.

6. It is against that order that the appellant-workman has preferred this appeal.

7. We have heard Mr. Patarawala for Mr.Sompura, learned counsel for the appellant and Mr.V.B.Patel, Senior Advocate for Mr.D.V.Patel (on caveat) for the respondent-Bank. Mr. Patarawala contended that the order passed by the Labour Court was legal and lawful and the application filed by the appellant could not be said to be barred by limitation and the appellant was rightly ordered to be reinstated with continuity in service with full back wages. The Industrial Court, as well as the learned Single Judge of this court, have committed an error of law apparent on the face of the record in interfering with the said order and in dismissing application filed by the appellant-workman holding that it was barred by limitation. The counsel also submitted that even on merits, service of the appellant could not have been terminated and the order was illegal, improper, inequitable and the award passed by the Labour Court granting reinstatement with full back wages ought not to have been interfered with by the Industrial Court or by the learned Single Judge.

8. Mr.V.B.Patel, on the other hand raised a preliminary objection regarding maintainability of Letters Patent Appeal. According to him, the order was passed by the Labour Court against which, appeal was allowed by the Industrial Court. When the appellant approached this court against the order passed by the Industrial Court, the learned Single Judge exercised supervisory jurisdiction under Art.227 of the Constitution of India and not under Art.226. Letters Patent Appeal against such order does not lie and hence it is required to be dismissed as not maintainable. On merits, Mr. Patel submitted that the order passed by the Industrial Court as well as by the learned Single Judge are in accordance with law and the application filed by the appellant-workman was clearly barred by limitation. No interference is, therefore, called for against those orders.

9. Having gone through the relevant provisions of the Act and the Bombay Industrial Relations (Gujarat) Rules,

1961, as also various decisions cited before us, we are of the view that the order passed by the Industrial Court as well as and by the learned Single Judge, does not require any interference. Hence, without expressing final opinion as to whether Letters Patent Appeal is or is not maintainable, we feel that in the facts and circumstances of the case, no interference is called for against the order impugned in the present appeal.

10. As is clear, services of the appellant were terminated by the respondent Bank vide its resolution dt. December 30, 1981. The appellant was informed about the said resolution and the fact of termination of his services on January 1, 1982. It is also clear that several letters and communications were addressed by the appellant to the respondent Bank in January 1982, April 1982, April 1983, May 1984 and July 1985. The appellant approached the Labour Court challenging his termination of December 30, 1981/January 1, 1982 for the first time on April 16, 1986. Mr. Patarawala contended that the appellant submitted approach letter as required under sub-section (4) of Sec.42 of the Act on December 28, 1985 but his request was rejected on January 6, 1986. Thereafter, he again submitted approach letter on 12th March 1986 and in these circumstances, his case would be covered under Sec.79 and Sec.42 of the Act read with Rule 53 of the Rules and the application could not be said to be barred by limitation. The Industrial Court, as well as the learned Single Judge after considering the relevant provisions of the Act, held that the services of the appellant came to be terminated on December 30, 1981/January 1, 1982 and when an application was filed in April 1986, it was filed after three months and hence it could not be said that the application was filed within a stipulated period of limitation and as such it was barred by limitation.

11. The learned Single Judge after referring to the relevant provisions of the Act and Rules, observed:

"From the facts of the case as stated hereinabove, though the employee has addressed representations to the employer, immediately within 20 days, he has not forwarded copy thereof to the Commissioner of Labour and has not proceeded further with such an application. he cannot, therefore, invoke the provisions of Rule 53(1), and in fact, said provision is not pressed into service. Under Rule 53(2), if an application is made under sub-rule(1), an agreement is required to be arrived at between

the employer and an employee within 15 days of the receipt of the application by the employer or within (such further period as may be mutually fixed by the employer and the employee.

In the present case, admittedly, no agreement is arrived at between the petitioner-employee and the respondent-bank, within 15 days from the date of his application dated 28th January 1982. There is nothing on record to show that the time was, thereafter, mutually extended by the employer and the employee for the purpose of arriving at the settlement. In that view of the matter, resort to Rule 53(2) of the Rules is also not permissible. Having realised this difficulty that none of the provisions of rule 53 would help the petitioner-workman, learned counsel for the petitioner has tried to contend before the Court that the matter would fall within Section 78(1) (A)(a)(III) and not within section 78(1)(A)(a)(I). In my opinion, the demand of the workman was that of withdrawing the order of termination and reinstating him in service and, therefore, squarely, the matter would fall under section 78(1)(A)(a)(1) and not under sub-clause (III) thereof. The application preferred by the workman was, therefore, clearly beyond the prescribed period of limitation and as held by the Supreme Court in case of Raipur Manufacturing Co. (Supra), there is no provision under the said Statute even to condone the delay caused in filing of such an application."

In our opinion, the reasons recorded by the learned Single Judge, in consonance with the provisions of the Act and Rules and no interference is called for. In our view, the learned Single Judge was also right in observing that the point is covered by a decision of the Hon'ble Supreme Court in Raipur Manufacturing Co. Ltd. v. Okha Devraj, AIR 1986 SC 683. In that case the Hon'ble Supreme Court observed-

"It will be seen on a combined reading of these provisions that an application to the Labour Court under section 79(1) in respect of dispute falling under section 78(1)(A) (a) (1) must be made within three months from the arising of the dispute and the dispute would be deemed to have arisen if, within a period of 15 days from the

receipt of the letter of approach under section 42, sub-section (4) by the employer or within such further period as may be mutually fixed by the employer and the employee, no agreement is arrived at in respect of the change desired by the employee."

In our opinion, therefore, no illegality has been committed by the learned Industrial Tribunal or by the learned Single Judge in dismissing the application of the workman on the ground of limitation.. We do not see any infirmity in the impugned orders and the appeal requires to be dismissed and is accordingly dismissed. The appeal is dismissed. No order as to costs.